

OLC 78-0545/a 0377

Office of Legislative Counsel

15 February 1978

Mr. James M. Frey  
Assistant Director for  
Legislative Reference  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Frey:

We have received and reviewed the report of the Department of Justice, provided by your Office by letter dated 3 February 1978, commenting on this Agency's proposed legislation to clarify the authority of the Director of Central Intelligence to authorize personnel to carry firearms.

We are pleased to receive formal notification that the Department of Justice concurs in the need for this proposed legislation. The Department recommends adoption of a revised paragraph for our transmittal letter which we transmitted to the Department on 20 December 1977. We, of course, do not object to such modification and will be happy to provide revised transmittal letters from the Director as soon as your Office is prepared to forward the proposal package.

In addition, the Department of Justice suggests that subsection (d)(iii) of our proposal be amended to specify an additional limitation on the Director's authority to authorize firearms protection for certain Agency officials. We do not object to this amendment, provided the Deputy Director is mentioned specifically along with the Director for such protection. Furthermore, in our view the word "personal" which appears in line 2 of the proposed Justice Department language should be deleted. The language in subsection (d)(iii) should not be so drafted that it is subject to an interpretation that would preclude designation of additional Agency personnel for firearms protection by an acting Director or Deputy Director. The intent of the Justice Department's proposed language is that the authority to authorize firearms protection for certain other Agency officials be exercised only by those individuals occupying the positions of the Director and Deputy Director of Central Intelligence. We do not object to such limitation on this authority; however, the further limitation that such designation may only be made personally by the Director or the Deputy Director arguably could be read to require that this specific authority run only to those two individuals as opposed to the individuals occupying the positions, i.e., an acting Deputy or Deputy Director. Deletion

of the word "personal" would remove this ambiguity and legislative history could provide that this authority to designate other Agency officials for firearms protection be limited only to the Director, the Deputy Director or an individual acting in that capacity and that delegation of the authority to other persons in the Agency could not be made.

Finally, the 90-day limitation contained in the Justice Department proposal could prove unnecessarily burdensome in practice and we would therefore propose that it be extended to 120 days.

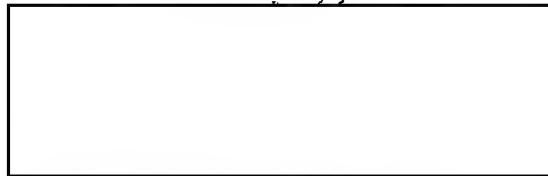
The Department of Justice indicates in its letter that it would not object to further modifications of the proposal to specifically include the Deputy Director for such protection. We have discussed with the Department of Justice the additional amendments to the proposal that would delete the term "personal" and would change the time limitation from 90 days to 120 days, and the Department indicates that such amendments would be acceptable. Taking these amendments into account, subsection (d)(iii) of the Agency's proposal would read:

"(iii) the Director and the Deputy Director and other Agency personnel as may be designated by the Director, such designations to be made only upon determination of the Director or Deputy Director that a specific stated exigency warrants such protective action and to be terminated, unless sooner renewed in the same fashion, upon expiration of the exigency or as specified in the designation order or at the end of 120 days, whichever is sooner."

We continue to believe that timely enactment of this proposal is of significant importance to the Agency. Please advise as soon as it is appropriate for us to provide you clean copies of the revised material so as to present the proposal to the Congress.

Thank you for your help.

Sincerely,



Acting Legislative Counsel

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~~EXECUTIVE OFFICE OF THE PRESIDENT~~

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

February 3, 1978

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer  
Central Intelligence Agency

*OLC-78-545*

SUBJECT: Justice comments on your agency's draft bill, "To authorize personnel of the Central Intelligence Agency to carry firearms under certain circumstances."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than cob, Wednesday, February 15, 1978.  
ORAL COMMENTS ACCEPTABLE.

Questions should be referred to Bob Carlstrom  
( 395-3856 ) or to -----  
the legislative analyst in this office.

Bernard H. Martin for  
Assistant Director for  
Legislative Reference

Enclosures

Department of Justice  
Approved For Release 2002/08/15 : CIA-RDP86-00101R000100070024-1  
Washington, D.C. 20530

FEB 2 1979

Honorable James T. McIntyre  
Acting Director, Office of Management  
and Budget  
Washington, D. C. 20503

Dear Mr. McIntyre:

This is in response to your request for the views of the Department of Justice on a draft bill to amend section 5(d) of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403f(d)), "to authorize personnel of the Central Intelligence Agency to carry firearms under certain circumstances."

Review of the general powers and responsibilities of the Director of Central Intelligence, as specified in the Act, indicates by fair implication that the Director not only may but should as necessary arm personnel engaged in the performance of their duties outside the United States and engaged within the United States in the protection of national security information, Agency property, designated Agency personnel, and defectors or others who come to the United States under Agency auspices. It would be remarkable indeed if the Agency's vital and sensitive functions could not be carried out with adequate physical security. Appropriate weaponry is, of course, an integral part of such security.

Amendment of the Act, as proposed, would provide express authority to arm Agency personnel engaged in the activities described above. Generally, authorization of Federal personnel to carry arms is so expressly stated. See, e.g., 18 U.S.C. 3053. The section of the Act to be amended is itself such an express authorization, from which one could argue against implying other authorization. Thus we concur in the need for the proposed legislation as a

matter of clarification. We also recommend adoption of the substitute for the third paragraph of the Agency's transmittal letters as proposed in the attached Agency memorandum of December 20, 1977, to us on the draft bill.

Because of the peril to the general population posed by the circulation of armed persons in their midst, we do recommend minimization of the number of agency personnel who may be designated for armed protection. We believe this should be done through a statutory limitation, accomplished by inserting the following after the words "designated by the Director" in subsection (d)(iii):

" , such designations to be made only upon personal determination of the Director or Deputy Director that a specific stated exigency warrants such protective action and to be terminated, unless sooner renewed in the same fashion, upon expiration of the exigency or as specified in the designation order or at the end of 90 days, whichever is sooner."

The letters of transmittal and sectional analysis should incorporate suitable reference to the added limitation. Note, we would not oppose inclusion of the Deputy Director as a person protected without limitation. This could be accomplished by adding in subsection (d)(iii) before the words "and other Agency" the words ", Deputy Director."

The Department of Justice recommends enactment of this legislation amended as suggested above.

Sincerely,

(Signed) Patricia M. Wald

Patricia M. Wald  
Assistant Attorney General

THE DIRECTOR OF CENTRAL INTELLIGENCE

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Office of Legislative Counsel

OLC 77-5616

20 December 1977

MEMORANDUM FOR: James R. Robinson  
General Crimes Division  
Department of Justice

FROM: [REDACTED]  
Assistant Legislative Counsel

SUBJECT: Legislative Proposal on Agency Use of Firearms

1. Based on our earlier conversations concerning the language of the transmittal letters for our legislative proposal on firearms authority for CIA personnel, we are proposing that the following paragraph be inserted in lieu of paragraph three of the letters to OMB, Honorable Walter Mondale and Honorable Thomas O'Neil, which your office has received for coordination from OMB:

Section 5(d) of the Central Intelligence Agency Act of 1949, as amended, provides only that Agency "couriers and guards" are authorized to carry firearms "when engaged in transportation of confidential documents and materials." There are other circumstances where it is necessary for Agency personnel to carry firearms if intelligence facilities, personnel and information are to be adequately protected. [REDACTED]

[REDACTED]

use of armed guards in such a situation is nowhere specifically prohibited by statute; nor does the legislative history on the proviso, "That the Agency shall have no police, subpoena, law enforcement powers or internal security functions ..." in section 102(d)(3) of the National Security Act of 1947, as amended (50 U.S.C.A. 403(d)(3)), militate against the Agency's utilization of armed guards at CIA covert installations. However, there is no explicit authorization for the Agency to protect its facilities, personnel and information by arming its security personnel with firearms. Therefore, we believe legislative clarification of the Agency's authority in this area is necessary to resolve issues relating to the scope of authority of Agency personnel who may be forced to use firearms, and thereby risk exposure to possible civil and/or criminal liability.

2. I believe this language more fully explains the existing situation in which this Agency finds itself and sets forth in more appropriate detail the reasons why clarification of this authority is needed. Please review this language and let me know if you have any suggestions or further comments. Thank you for your help.

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Distribution:

Orig - Addressee

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OLC:RLB:sm (20 Dec 77)

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A BILL

To authorize personnel of the Central Intelligence Agency to carry firearms under certain circumstances.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That Section 5(d) of the Central Intelligence Agency Act of 1949, as amended, (50 U.S.C. 403f(d)) is amended to read as follows:

"(d) Authorize, under such regulations as the Director shall prescribe, Agency personnel, while in the discharge of their official duties, to carry firearms; Provided, however: That within the United States, such official duties shall include only the protection of (i) information concerning intelligence sources and methods and classified intelligence documents and material; (ii) facilities, properties, monies and other valuable assets owned or utilized by the Agency; (iii) the Director and other Agency personnel as may be designated by the Director; and (iv) defectors and foreign persons visiting the United States under Agency auspices; and Provided further, That such duties shall include the transportation and utilization of firearms for authorized training;"